

1 KAMALA D. HARRIS  
Attorney General of California  
2 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
3 WILLIAM A. BUESS  
Deputy Attorney General  
4 State Bar No. 134958  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2039  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

8  
9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues  
12 Against:

Case No. 2011-595

13 **JUSTIN BRYAN FENTON**

**STATEMENT OF ISSUES**

14  
15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in  
20 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
21 Consumer Affairs.

22 2. On or about August 16, 2010, the Board of Registered Nursing, Department of  
23 Consumer Affairs received an application for Licensure by Examination from JUSTIN BRYAN  
24 FENTON (Respondent). On or about August 11, 2010, Justin Bryan Fenton certified under  
25 penalty of perjury to the truthfulness of all statements, answers, and representations in the  
26 application. The Board denied the application on September 9, 2010.

27 ///

28 ///

1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	

4. Section 2761 of the Code states in pertinent part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

“  
• • •

" 4. Section 2762 of the Code states in pertinent part:

“ . . .

"(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.

## STATEMENT OF ISSUES

1       5.    Section 2736 of the Code provides, in pertinent part, that the Board may deny a  
2 license when it finds that the applicant has committed any acts constituting grounds for denial of  
3 licensure under section 480 of that code.

4       6.    Section 475 of the Code states in pertinent part:

5       "(a) Notwithstanding any other provisions of this code, the provisions of this division shall  
6 govern the denial of licenses on the grounds of:

7       "...

8       "(2) Conviction of a crime.

9       "...

10       "(4) Commission of any act which, if done by a licentiate of the business or  
11 profession in question, would be grounds for suspension or revocation of license.

12       7.    Section 480 of the Code states:

13       "(a) A board may deny a license regulated by this code on the grounds that the applicant has  
14 one of the following:

15       "(1) Been convicted of a crime. A conviction within the meaning of this section means a  
16 plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a  
17 board is permitted to take following the establishment of a conviction may be taken when the  
18 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when  
19 an order granting probation is made suspending the imposition of sentence, irrespective of a  
20 subsequent order under the provisions of Section 1203.4 of the Penal Code.

21       "(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially  
22 benefit himself or herself or another, or substantially injure another.

23       "(3) (A) Done any act that if done by a licentiate of the business or profession in question,  
24 would be grounds for suspension or revocation of license.

25       "(B) The board may deny a license pursuant to this subdivision only if the crime or act is  
26 substantially related to the qualifications, functions, or duties of the business or profession for  
27 which application is made.

28       ///

1       "(b) Notwithstanding any other provision of this code, no person shall be denied a license  
2 solely on the basis that he or she has been convicted of a felony if he or she has obtained a  
3 certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of  
4 Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has  
5 met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate  
6 the rehabilitation of a person when considering the denial of a license under subdivision (a) of  
7 Section 482.

8       "(c) A board may deny a license regulated by this code on the ground that the applicant  
9 knowingly made a false statement of fact required to be revealed in the application for the  
10 license."

#### 11                               REGULATORY PROVISIONS

12       8.     California Code of Regulations, title 16, section 1444, states in pertinent part:

13       "A conviction or act shall be considered to be substantially related to the qualifications,  
14 functions or duties of a registered nurse if to a substantial degree it evidences the present or  
15 potential unfitness of a registered nurse to practice in a manner consistent with the public health,  
16 safety, or welfare. Such convictions or acts shall include but not be limited to the following:

17       "...

18       "(c) Theft, dishonesty, fraud, or deceit.

#### 19                               FIRST CAUSE FOR DENIAL OF APPLICATION

20       (Disorderly Conduct, Battery, and Disturbing Another Conviction February 27, 1998)

21       9.     Respondent's application is subject to denial for unprofessional conduct under  
22 sections 2761(a) and (f), 2736, 475, 480, and California Code of Regulations Title 16, section  
23 1444, based on the conviction for Disorderly Conduct, Battery and Disturbing Another. The  
24 circumstances are as follows:

25       a.     On or about February 27, 1998, in the action entitled *People of the State of*  
26 *California v. Justin Bryan Fenton*, Riverside County case number 22426, Respondent pleaded  
27 GUILTY to a misdemeanor violation of Penal Code section 415(2), Willfully, Unlawfully and  
28 Maliciously Disturbing another person by loud and unreasonable noise; misdemeanor violation of

1 Penal Code section 242 Battery; and misdemeanor violation of Penal Code section 647(f)  
2 Disorderly Conduct-public intoxication.

3 SECOND CAUSE FOR DENIAL OF APPLICATION

4 (DUI Conviction July 7, 1998)

5 10. Respondent's application is subject to denial for unprofessional conduct under  
6 sections 2761(a) and (f), 2762(b) and (c), 2736, 475, 480 and California Code of Regulations  
7 Title 16, section 1444, based on a conviction for Possession of a Controlled Substance and DUI.  
8 The circumstances are as follows:

9 a. On or about July 7, 1998, in the action entitled *People of the State of California*  
10 *v. Justin Bryan Fenton*, Riverside County case number RIM 370457, Respondent pleaded  
11 GUILTY to misdemeanor violation of Health and Safety Code section 11377(a), Willfully and  
12 Unlawfully possess a controlled substance, to wit, METHAMPHETAMINE; and misdemeanor  
13 violation of California Vehicle Code section 23152(b) DUI.

14 THIRD CAUSE FOR DENIAL OF APPLICATION

15 (Conviction for Filing False Report Conviction August 23, 2002)

16 11. Respondent's application is subject to denial for unprofessional conduct under  
17 sections 2761(a) and (f), 2736, 475, 480 and California Code of Regulations Title 16, section  
18 1444, based on a conviction for Filing a False Report of Criminal Activity. The circumstances  
19 are as follows:

20 a. On or about August 23, 2002, in the action *People of the State of California v.*  
21 *Justin Bryan Fenton*, Riverside County Superior Court case number COM 037453, Respondent  
22 pleaded GUILTY to misdemeanor violation of Penal Code section 148.5(a), Willfully and  
23 Unlawfully reporting to a law enforcement officer that a felony and misdemeanor has been  
24 committed knowing that report to be false.

25 FOURTH CAUSE FOR DENIAL OF APPLICATION

26 (DUI Conviction October 19, 2006)

27 12. Respondent's application is subject to denial for unprofessional conduct under section  
28 2761(a) and (f), 2762(b) and (c), 2736, 475, 480 and California Code of Regulations Title 16,

1 section 1444, based on a conviction for misdemeanor violation of California Vehicle Code  
2 section 23152(a) and (b). The circumstances are as follows:

3 a. On or about October 19, 2006, in the action *People of the State of California v.*  
4 *Justin Bryan Fenton*, Riverside County Superior Court case number RIM 486551, Respondent  
5 pleaded GUILTY to misdemeanor violations of California Vehicle Code section 23152(a) and  
6 (b).

7 FIFTH CAUSE FOR DENIAL OF APPLICATION

8 (Arrest, Under the Influence of Controlled Substance December 27, 1997)

9 13. Respondent's application is subject to denial for unprofessional conduct under  
10 sections 2761(a) and (f), 2762(b) and (c), 2736, 475, 480 and California Code of Regulations  
11 Title 16, section 1444, based on an arrest for misdemeanor violation of Health and Safety Code  
12 section 11550(a), Willfully and Unlawfully Use and be Under the Influence of a Controlled  
13 Substance. The circumstances are as follows:

14 a. On or about December 27, 1997, Respondent was arrested and subsequently  
15 charged with misdemeanor violation of Health and Safety Code section 11550(a) Willfully and  
16 Unlawfully Using and Being Under the Influence of a Controlled Substance in the action *People*  
17 *of the State of California v. Justin Bryan Fenton, and others*, Riverside County case number  
18 22611. The case was subsequently dismissed against Respondent on Respondent's completion  
19 of the court ordered drug diversion class.

20 PRAYER

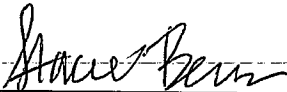
21 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
22 and that following the hearing, the Board of Registered Nursing issue a decision:

23 1. Denying the application of Justin Bryan Fenton for Licensure by Examination;  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

2. Taking such other and further action as deemed necessary and proper.

DATED: 1-11-2011

*for*   
/ LOUISE R. BAILEY, M.Ed., RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
*Complainant*

SD2010702682  
70415610.doc